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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 11

James E. Youngdahl, W. Chandler, Ruth Ralph, Amalgamated Clothing Workers of America, CIO, et al., Petitioners,

vs.

Rainfair, Inc.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENTS

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Table of Cases Cited

Other Authorities Cited

It is believed that the citation of
36 A. L. R. (2d) 1037, in 226 Ark. 88,
should be 32 A. L. R. (2d) 1037.

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BRIEF FOR RESPONDENTS

Questions Presented

1. Whether a state court may, consistently with the free speech guarantee of the Fourteenth Amendment, prohibit strikers from picketing, which picketing was carried on with intimidation, threats, violence, and other unlawful means.

2. Whether a state court may, consistently with the Fourteenth Amendment, prohibit strikers from picketing, loitering and congregating on leased property across from the struck plant, because the picketing was set in a pattern of violence and conducted in a manner that was unlawful.

3. Whether a state court may, consistently with the Fourteenth Amendment, prohibit all picketing because the picketing is conducted in violation of a State Criminal Statute.

4. Whether the conduct of the strikers on the picket line, including the speech hurled by them at the employees as they went to and from their work, amounted to lewd, obscene, profane, libelous and insulting or "fighting words", which words by their utterance tended to incite an immediate breach of peace, which was not protected by the Fourteenth Amendment.

5. Whether or not the evidence is sufficient to support the findings of fact of the lower court and the State Supreme Court, that the strikers in picketing Rainfair's plant resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of peace, and other unlawful results.

6. Whether a state court may prohibit the unlawful conduct of the strikers, in view of the provisions of Taft-Hartley.

Constitutional and Statutory Provisions Involved

The Constitutional provision involved, in addition to the ones cited in Petitioners' Brief, is Amendment No. 34 to the Arkansas Constitution. See Appendix, P. 50.

The relevant Arkansas Statutes are Sec. 41-1412 and Sec. 81-201-202. See Appendix, P. 50.

STATEMENT OF CASE

Rainfair, Inc., is engaged in the manufacture of men's slacks in its plant at Wynne, Arkansas, where it employed approximately 100 women and seven men in April 1955. It ships these slacks in interstate commerce. None of the employees were members of a labor union at that time, but some of them had signed membership application cards with Petitioners.

On Monday, May 2, 1955, twenty-nine employes failed to return to work, and a picket line was established by the Union. (R 119).

Rainfair Plant Manager notified said employees by registered mail that it would be assumed that they were quitting their jobs, if they did not return to work in three or four days. (R 121). Three employees returned to work (119) and the picketing was continued until May 19, 1955, when the pickets were withdrawn and the strikers applied for reinstatement. (127). In the meantime, Rainfair had hired thirteen new employees, and immediate reinstatement of the strikers was declined. (R 121).

On June 17, 1955, the strikers met with several staff members of the Union at Forrest City, Arkansas, and

voted to re-establish the picket line, because Rainfair had refused to reinstate the strikers; (R 46-47). or for continuing unfair labor practices. (R 45).

In the meantime Petitioner filed charges with the Labor Board, alleging violation of 8 (a) (1), 8 (a) (3), 8 (a) (5) of the National Labor Relations Act. The Union was not willing at that time to go into an election to determine whether or not they had a majority status (R 45-46).

On October 19, 1955, an election of the workers was held and the Union lost the election.

During the first picket line (May 2 to May 19, 1955) a pattern of unlawful conduct was established. One of the pickets told the plant manager she was going to wipe the sidewalks clean with him, and send him back to Wisconsin because he was nothing but trash. (R 128). On one occasion nails were strewn throughout Rainfair's parking lot, and about a week later roofing tacks were strewn on the Manager's driveway at home and in the driveways at the homes of twelve girls who did not go on strike (R 128-129). The roofing tacks were introduced into evidence. (R 155).

The picketing was resumed about 6 o'clock on June 20, 1955. At 12:30 A. M., on June 20, Hazel Kennedy and Florence Roberts, two of the strikers, who had been molesting Jewell Newby, and threatening to move her trailer, in which she lived, which was located opposite the Rain-

fair Building on the east side of Rowena Street, and who had also threatened to whip her, stopped a Ford Pick-up truck they were in (R 92), and Florence Roberts got out of the truck and took an ice pick and punctured the front and back tires on Mrs. Newby's daughter's car which was parked in front of the trailer (R 93-94). They were arrested and convicted on criminal charges in the Justice of the Peace Court. (R 94 - 106).

At 5:15 the same morning Elmer Brown, City Policeman, was called to the Plant by Charles Gossett, and he found a window broken, glass laying in the floor and a black snake about five feet long, lying coiled up by the wall. The snake was lying right under the window (R 106).

When the picketing was resumed on June 20, 1955, the Union rented a vacant lot for a month, directly across and on east side of Rowena Street from the main entrance to Rainfair's building. (R 86). This street runs north and south, and is about 20 feet wide. Rainfair's building is on west side of street and faces east. There is a parking lot on the east side of the building between the building and the west side of Rowena Street. Most of the employees drive or ride with other employees to and from work, and enter the building through the door on the east side of the building. These employees park their cars, headed toward the east wall of the building (R 109).

The Union placed a tent on the lot in which they in-

stalled a telephone, tables, three benches, chairs, and the lot was used as headquarters for the strikers. (R 86).

The picketing was resumed and usually one or two pickets would walk and carry signs up and down Rowena Street. Other Union Staff members, strikers, and their sympathizers would assemble under and around the tent in groups estimated at different times from eight to thirty-seven. (R 28 - 128). It was the focal point of all this picketing and the headquarters for the concerted action of either name calling, singing, or jeering. (R 111). As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the west edge of their lot and sometimes in Rowena Street, and engage in loud and offensive name calling, singing or shouting directed at the workers. They were called "slaves," "cotton picking fools", scabs of all kinds such as "dirty scabs," "pony-tailed scabs," "fat scabs" "crazy scabs." They would make remarks about raising rocks in the yard and finding frogs and disagreeable looking animals that were much finer than the appearance of the workers. (128). This took place every time an employee left or entered the plant. It was done by the strikers individually, in couples, by the entire group, and in dozens, in a loud and boisterous manner. When it got to be more than that it became bedlam. (R 128). Individual workers were singled out for their special type of abuse, insults, and coercion, for example:

1. Every time Pete Bonady, Plant Manager, went to and from the plant it was like lighting a firecracker, and you could hear the noise for blocks. Invariably, when he left the plant somebody would follow behind in an automobile. If he went to the Post Office, bank, or home for lunch, he was followed. (R 113). They came by his house at night. Sometimes they would come by his home at 1:30 A. M. hollering, "Peter Rabbit", and tooting horns. (R 114). On June 20, and 21, he had to disconnect the telephone at home because he began, at 9:00 o'clock, getting anonymous phone calls and they would say nothing. On June 20, this continued until 12:40 A. M. He had to disconnect the phone and have it connected at 6 the next morning, and he continued to do this until the injunction was filed, and he hasn't been bothered since. (R 114).

2. Dollie Jones, who had been working there 20 months, was called a scab almost every day as she went to and from work by a group that was assembled in front of the tent (R 132). Lois Morrison and Florence Roberts, two of the strikers, drove by Charlie Boone's house, where Dollie Jones and Nadine Johnson were visiting on the lawn after work hours, and slowed their car down and Lois stuck her head out of the window and hollered,

> "You girls better check your sheets tonight. There might be a snake in them." (R 133).

This occurred after everybody was talking about a snake having been found in the plant. (R 135).

3. Rubie Reynolds, who had been working there over a year, was pregnant. She had this to say about what they hollered at her: —

> "Well, the first time they was picketing it they didn't have anything to say to me. I mean, you know, they didn't say anything, but the last time why they hollered, 'Get the hot water ready,' and 'I am coming to make another payment on the baby, call Dr. Beaton,' and here last week I went to the doctor and one day they said, 'Why you can work another hour until you go in the delivery room at least.' They said, 'There is no need in going up there right now,' and when I came back they asked me did I go on a false alarm. Just mostly my condition is what they —" (R 136).

Dollie Jones drove up to a filling station down town to get gas, and Lois Morrison and Florence Roberts drove up about the same time, and the attendant asked who got there first, and they said:

> "Why we were here first, you don't want to wait on these scabs before you do us. They are scabs." (R 137).

4. Corlis Jones, who had been working at the plant since the day it was opened, was called "yellow scabs", "fat scabs," "cotton patch scabs", and "just all kinds of scabs." She said they would all move forward from where they were, and then they would just call names, and sometimes they would just call you a scab as the rest of them, and sometimes they would call and say,

> "Corlis is a big yellow scab, a big this, that and just making remarks, you know, about being a slave, and it didn't bother me so much until they called

my name personally, and then when they called my name personally, of course, I just didn't like it. It would make me more nervous." (R 139).

5. Lorene Jones, who had been working at the plant since September, was called; "A fuzzy-headed scab", "a slave", "a damned fool," and "a filthy face." She worked on South side of building and the windows were open on Martin Street. The pickets would come over there and sit down, point at her, and call her ugly names, and Lois Morrison spit at her three times through the window. (R 141).

6. Ella Jane Clark, who had been working at the plant eight months, was called "A scab," "Pony Tailed Scab," and "A fool." It was done in groups and also just people, two or three at the time. (R 143).

7. They had this to say to Annie Brown, who had worked at the plant 16 months, and was the wife of Elmer Brown, the City Policeman. They would sing that they would roll it over her, and holler and ask where was the Policeman. One afternoon he came up there after her and Lois Morrison told him he was a scab because he was married to a scab. (R 145). While she was working she could observe the pickets on Martin Drive, and she said this;

"Well, they put up their hands like this (indicating), and made signs, and stick their tongues out and sit and

hold their nose and blow it out, and just holler and yell and point to the window." (R 145).

8. Geraldine Baker, who had worked at the plant five months, was called a "fat scab" by the group, and Lois Morrison hollered this at her;

> "Oh, look there at that low-cut dress, and big earring girl," and, "Does Pete still like low-cut dresses and earrings?" (R 147).

9. Dorothy Davis, who had worked at the plant 17½ months, was called a dumb scab, cotton picking scab, and just all kinds of scabs. This was done by a mass assembled in the road and around the tent and by individuals. They sang songs to her like this;

> "Born in a cotton field in Arkansas, the greenest gals we ever saw, working for Rainfair for seventy-five cents."
>
> They also sang,
>
> "When the scabs go marching in," using the tune, "When the Saints go marching in," as we all start in the building.
>
> "When the scabs go marching in, oh, how I would hate to be in that number when the scabs go marching in." (R 149).

Jack Cobb, Chief of Police, was called down to Rainfair when the picket line was thrown up. Mr. Chandler, Union representative, filed a complaint with him Thursday. On another occasion Mr. Chandler requested that he be down there, each morning, at noon, and in the afternoon, and at each rest period. On another occasion, Mr.

Chandler called him to come down there at once. He said there were two of the workers that had walked to the end of the walk with pop bottles in their hands. He was there many times during both picket lines and in answer to how they acted the last time he said;

> "Well, I just — each side. I just felt there was going to be trouble. I told Mr. Chandler I felt so. I told Mr. Brown I thought so. There was a different attitude the last time than there was the first time." (R 152).

Charles E. Ford, who was agent for an insurance company, had business at the plant, and had occasion to observe the conduct of the strikers. He became so concerned as a citizen, that he went to the police and expressed his opinion that he was afraid if the thing continues there is going to be violence." (R 82).

Pete Bonady stated that the girls were extremely nervous. They were frightened that some bodily injury could take place, plus the fact that they were under a constant barrage of name calling and they were extremely nervous. (R 115). Mr. Bonady was very concerned about something happening to his family (R 123). He stated that in his opinion, it wouldn't have taken much to have touched something off, and there would have been physical violence there. The girls were extremely nervous. They were afraid they were going to be molested going and coming from work, whether something would happen at

home. (R 129).

On June 24, 1955 Rainfair procured a temporary injunction, enjoining the picketing and the above conduct. (R 5). This injunction was made permanent on September 15, 1955 (R 13). Lower court affirmed by Arkansas Supreme Court on March 19, 1956. (Tr. 196).

On June 28, 1955 Jack Cobb, Chief of Police, was called down to the plant by Mr. Bonady and shown a big area of broken milk bottles, fruit jars, and coca cola bottles. Some of this broken glass was in the street, but most of it was up where Mr. Bonady parks his car. (R 156-57). The glass was introduced into evidence. (R 157). The court instructed Mr. Cobb to try to find out who broke the glass and distributed it along the highway (R 157). Mr. Cobb got information that two boys, Thomas Cobb, and Jerry Hamrick, were the ones that did it.

On July 20, the court on its own motion issued an order to defendants, and specifically, to Thomas Cobb, Mildred Tacker, Lee Hamrick and Jerry Hamrick, to appear in Chancery Court on July 27, 1955, and to show cause why they should not be adjudged in contempt for violating the temporary injunction. (R 10-11).

A hearing was had on this motion on July 27, 1955, and the testimony of Jack Cobb, (R 155-163), Mildred Tacker (R 163-176), Jerry Hamrick, (R 176-183), and Lee Hamrick (183-19), was taken. On September 15, 1955 the

citation for contempt was dismissed (R 15).

It developed at this hearing that Thomas Cobb and Jerry Hamrick, two boys, broke the bottles and strew the glass. Thomas Cobb told the Chief the reason he did it was because "Pete did not treat his sister right." "Well, he wouldn't give her job back to her down at the plant." (R 158-160).

Thomas Cobb gave as his reasons for doing it, "I gave him one because they were mistreating my sister, and another was, because I was mad at Mrs. Newby. I didn't want to have nothing to do with Mrs. Newby. I knew she was trouble." (R 169). Mildred Tacker, one of the strikers, was a sister to Thomas Cobb. (R 163).

Jerry Hamrick is a son to Lee Hamrick, and he stated that the botties were in front of Mrs. Newby's trailer. (R 178). That his daddy was one of the strikers but he did not participate in the second strike. (R 180). He said he was not mad at the employees and did not want to damage their car tires. (181). He gave no reason to the Chief why he broke the glass. (158).

Lee Hamrick, one of the strikers, had the Union headquarters at his home on Rowena Street during the first picketing. (R 183). He was not re-employed. When the second picket line was established he did not participate. Mrs. Newby's trailer was located in his yard. He made her move this trailer. (184). He had no contact with the Union

the second time; he "kind of pulled out of it." (R 187). He would not permit them to come back in his yard. He said he got out of the Union because some of them tried to get him to do violence and destroy property. "I said they did try to get me to, and I wouldn't do it." He refused to identify these persons. (R 189). He stated that it was not any one that was involved in the strike. He then said that it was not anyone that asked him to destroy none of the property.

"Q. What did they ask you to do?

A. They wanted me to put snakes, and stuff like that, in there. They asked me to but I wouldn't." (R 190).

He said that the person that wanted him to put the snake in there lived at Augusta, now, and that he could not think of that man's name. (R 190).

After the injunction was issued there was no further trouble, other than the bottle breaking done by Thomas Cobb and Jerry Hamrick.

On July 24, 1955, Rainfair filed a class action asking for an injunction against the Union and seven former employees of Rainfair on account of the unlawful acts set out above. A temporary injunction was issued on June 24, 1955, and made permanent on September 15, 1955. (R 5 and 13) In its decree making the injunction permanent the court among other things found: —

"2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, and that said defendants should be permanently enjoined from picketing the plaintiff's plant." (R 13).

On March 19, 1956, the Supreme Court of Arkansas affirmed the lower Court. (R 196-203). *Youngdahl V. Rainfair, Inc., 226 Ark. 80.*

The Supreme Court among other things found: —

"According to the undisputed evidence here, the whole pattern of conduct along the picket line discloses a clear design on the part of the appellants to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results. It is difficult to understand how any court could classify such conduct as 'peaceful picketing'." (R 202).

The court further said: —

"It has long been a violation of the criminal laws of this state for any person to ' . . . make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault . . ." Ark. Stats. Sec. 41-1412." (R 201)

And, "A constitutional right to abuse, insult, slan-

der or intimidate others is simply nonexistent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others." (R 201).

SUMMARY OF ARGUMENT

It is Respondent's contention that the picketing and related activities begun by the Union about 12:30 A. M., on June 20, 1955, and continuing until June 24, 1955, was carried on with violence, intimidation, threats, coercion and other unlawful conduct, which was intended to cause a breach of peace, and this conduct was not protected activity. This is the only question.

We venture the assertion that this is the first case before this court where intimidation was also carried on by throwing a snake in the plant. It will be argued that there is no evidence connecting the snake incident with the Union. However, we call the court's attention to the testimony of Dollie Jones (R 133) and Lee Hamrick. (R 190).

The Arkansas Supreme Court followed the case of Lilly Dache, Inc., V. Rose, 28 N. Y. S. (2d) 303, in defining what is "peaceable picketing." See 226 Ark. 86. The conduct of the strikers was not peaceable as so defined, but unlawful.

It is argued that the conduct of the strikers was not unlawful. Two Arkansas Courts have held otherwise, and their findings will not be reversed unless they are so without warrant as to be a palpable invasion of the constitutional guarantee here invoked. We have meticulously detailed the facts, in our statement of the case, so that the

court may, at the beginning, get the full impact of the strikers' conduct.

We think no useful purpose could be served by again detailing the facts shown by the record, in order to sustain our contention that the evidence is sufficient, to sustain the findings of the two Arkansas Courts.

ARGUMENT

A. Violence, Coercion and Intimidation by Union Against Rainfair, and Its Employees, and Other Conduct as was calculated to cause breaches of the peace is not protected by the Fourteenth Amendment.

There are certain fundamental principles of law involving freedom of speech that have been well settled by the Court.

In Thornhill V. Alabama, 60 S Ct. 736, 310 U. S. 88, the Court said: —

> "It is imperative that, when the effective exercise of these rights is claimed to be abridged, the court should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations." 60 S Ct. 741.

A group in power may not impose penal sanctions on *peaceful and truthful discussions* of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interest and the safeguarding of *peaceful and truthful discussions* is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern, and every expression of opinion on matters that are important has a potentiality of inducing action in the interest of one rather than another group in society.

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants." 60 S Ct. 745.

The court further said: —

"The power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of the residents cannot be doubted." S Ct. 60, 745.

In Milk Wagon Drivers Union of Chicago V. Meadowmoor Dairies, 61 S. Ct. 552, 312 U. S. 287; the court said at page 555 of 61 S Ct.: —

"It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guarantee of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The Court further said that "acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence*****." "Nor can we say that it was written into the 14th Amendment that a state through its courts cannot base protection against future

coercion on the inference of the continuing threat of past misconduct."

In International Labor Relations Board V. Virginia Electric Power Company, 62 S.Ct. 344, 314 U.S. 469, the court said,

> "But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways." 62 S Ct. 348.

In Allen - Bradley Local V. Wisconsin Employment Relations Board, 62 S Ct. 820, 315 U. S. 740, the court said:

> "We agree with the statement of the United States as amicus curiae that the federal Act was not designed to preclude a State from enacting legislation limited to the prohibition or regulation of this type of employee or union activity. The Committee Reports on the federal Act plainly indicate that it is not 'a mere police court measure' and that authority of the several States may be exerted to control such conduct. Furthermore, this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested'." 62 S Ct. 825.

The court further said that Congress had not made such employee and Union conduct as is involved in the above case subject to regulation by the Federal Board.

In Thomas V. Collins, 65 S Ct. 315, 325 U. S. 516, the court said: —

> "When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. Cf. National Labor Relations Board V. Virginia Electric & Power Co. supra. But short of that limit the employers' freedom cannot be impaired. The Constitution protects no less the employees' converse right. Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection." 65 S Ct. 326.

In International Union V. Wisconsin Employment Relations Board, 69 S Ct. 516, 336 U. S. 245, the court said: —

> "While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal — even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods." 69 S Ct. 521.

In Gibbony V. Empire Storage & Ice Company, 69 S Ct. 684, 336 U. S. 490, the court said: —

> "It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.". 69 S Ct. 688.

The court further said that neither Thornhill V. Alabama, supra, nor Carlson V. California, 310 U. S. 106, 69 S. Ct. 746, supports the contention that conduct otherwise unlawful is always immune from state legislation because an integral part of that conduct is carried on by display of placards by peaceful picketers. The court then stated that it was careful to point out in the Thornhill opinion that it was within the province of states "to set the limit of permissible contests open to industrial combatants."

In Hughes V. California, 70 S Ct. 718, 339 U. S. 460, the court said that while picketing is a mode of communication it is inseparably more and different.

> "Industrial picketing is more than free speech, since it involves patrol of a particular locality and since the very presence of a picketing line may induce action of one kind or another quite irrespective of the nature of the ideas which are being disseminated.'****"
>
> "But the very purpose of a picket line is to exert influences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word." 70 S Ct. 721.

In International Brotherhood of Teamsters V. Hanke, 70 S Ct. 773, 339 U. S. 470, the court said that it must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. The court recognized that picketing is "indeed a hybrid." 70 S Ct. 775.

In Building Service Employees International Union V. Gazzam, 70 S.Ct. 784, 339 U. S. 532, this court said that it has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity. 70 S. Ct. 787.

In Garner V. Teamsters, 74 S. Ct. 161, 346 U. S. 486, the court at page 164, 74 S. Ct. again reiterated the principles of law that a state still may exercise,

> " 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways' ".
>
> " Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America V. Wisconsin Employment Relations Board, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. 1154."
> See United Const. Workers V. Laburnum Const. Corp., 74 S. Ct. 833, 347 U. S. 656. (See page 838 S. Ct. 74).

B. The Arkansas Law and Its Public Policy.

It has long been the law that laborers have the right to organize into unions for the purpose of bargaining collectively for the betterment of their condition, and as an incident thereto to strike collectively.

On the other hand, labor unions have no right to resort to force, intimidation or coercion; publicity as well as other means of persuasion may be used, but force; intimi-

dation and coercion may not be used. See Local Union No. 313 V. Stathakis, 135 Ark. 86, Riggs V. Tucker Duck & Rubber Co. 196 Ark. 571, Local Union No. 858, Hotel & Restaurant Employees Int'l. Alliance V. Jianna, 211 Ark. 353, Smith V. F & C Engineering Co. 225 Ark. 688.

The facts in the above four cases are very similar to the facts in this case. In Local Union No. 313 V. Stathakis, supra, the Arkansas Court affirmed the lower court in enjoining the picketing, and went into a thorough investigation of the law on this subject. To sum up what the court said we quote: —

> "There must be taken into account the number of picketers, the extent of their occupation of the sidewalk, or street adjacent to the building or place picketed, and as well what they say and do and how they act. If the purpose of picketing is to interfere with those going into or coming out of the building, or place picketed, an injunction may be granted. On the other hand, if the design of the picketing is merely to give notice to the public that the proprietor of the place picketed is unfair to union labor, or to see who can be made the subject of persuasive argument, such picketing is legal and ought not to be enjoined.". (135 Ark. 98).

In Riggs V. Tucker, Duck & Rubber Company, supra, the facts show that during the day, and as numbers of the mob increased such epithets as "scab", "yellow belly", "snake in the grass", and names more opprobrious, violent and vulgar were uttered by members of the Union, and that this continued throughout the day, being more violent

at times than others. No personal violence to those unloading the lumber was attempted while the work was going on, but threats of what would happen later were heard. The Supreme Court affirmed the action of the lower court in granting the injunction. It was argued that the Stathakis case had become obsolete and had become an anachronism. However, the court said at page 580: —

> "We do not agree that the Stathakis Case is now obsolete and has become an anachronism. It is based upon the simplest and most elementary principles of right and justice. Nor do we agree that it has been repudiated by other courts. The brief of counsel for appellee cites many cases in which it has been approved."

In Local Union No. 858, etc., V. Jiannas, supra, at 211 Ark. 357, the court said: —

> "We reaffirm and reiterate our holding that the right to strike is one of which the employee may not be deprived, and he may solicit support by any lawful means he chooses to employ, but in the recent case of Smith and Brown V. State, 207 Ark. 104, 179 S. W. 2d 185, we said: ' . . . but even picketing when accompanied by force, violence, intimidation or coercion cannot find any protection under the constitutional guaranties of freedom of speech and freedom of the press.' "

In Smith V. F & C Engineering Co., supra, the lower court's findings that the threats and acts of intimidation, violence and property damage reflected by the proof was not isolated and disassociated incidents, but were enmeshed in, and inseparably connected with, the picketing, and

that the picketing should be enjoined. The court further said: —

> "Perhaps the rationale of the result reached in the Meadowmoor Dairies and Jiannas cases, supra, is best stated by the annotator in 132 A. L. R. 1221 as follows: —
>
> 'The reason most frequently advanced by the courts in justification of the blanket injunction against all picketing, where there has been past violence or other unlawful conduct, is that an injunction of such breadth is necessary to prevent future excesses and coercion, which, in the light of the past conduct, may reasonably be anticipated.'"

The public policy of the state with reference to freedom to work, affiliation with a labor union, or refusal to join or affiliate with a labor union, is set forth in Amendment No. 34 to the Arkansas Constitution, which was adopted in 1944 and reads as follows: —

> "No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment." 1 Ark. Stat. (1947) 233.

And by Arkansas Stats. 1947, Sec. 81-201, et seq., Sec. 1. of said statutes states:

> "Sec. 1. 81-201. Public policy — Freedom to bar-

gain. — Freedom of organized labor to bargain collectively, and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment No. 34 to the Constitution. (Acts 1947, No. 101, par. 1, p. 211."

C. The unlawful conduct of the Union violated Arkansas Statute (1947) Sec. 41-1412 known as "The Tranquility Statute."

It is a violation of the criminal laws of the State of Arkansas,

"If any person shall make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence, or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault shall be deemed guilty of a breach of the peace, ******." Ark. Stats. (1947) Sec. 41-1412.

It is respondent's contention that the acts of violence, the mass picketing, the blocking of ingress and egress to the plant, the following of the plant manager and the workers, the anonymous telephone calls to the home of the plant manager, and the persistent coercion, intimidation, applied force, insults and epithets thrown at the workers in a loud and boisterous manner cannot be equated as peaceful and truthful dissemination of free speech. Publicity as well as other means of persuasion could be used, but it is unlawful to use force, intimidation and

coercion in order to give publicity to the strikers' cause.

The above acts and conduct constituted a criminal offense under Section 41-1412 of the Arkansas Statutes.

In State of Arkansas V. Moser, 33 Ark. 140, the court held an indictment good which charged the defendant with saying to W. T. Moser, "Go to hell, goddam you," which language was calculated to anger the said Moser.

In Ruffin V. State, 207 Ark. 672, the defendant was convicted of a breach of peace for making the following proposition to a young, eighteen-year-old lady.

> "I would give you $10.00 to take you out . . . I would take you out tonight and love you up, and I would give you $10.00 . . ."

She testified that the words of Ruffin were insulting to her and made her extremely nervous.

See also 34 A L R 580.

In Moore V. State, 50 Ark. 25, an indictment founded upon the statute was construed and the court at page 27 said:

> "The Act recognizes the right of a person, not only to be safe, but to feel safe;*****."

See also the case of Holmes V. State, 187 Ark. 136, (See dissenting opinion of Judge Smith.)

The defendants were not only called scabs of all kind, but in particular, "big yellow scab," (R 139), "fuzzy-headed scabs," "slaves," "damn fools," "filthy face," (R 140)

"fools," (R 143), "fat scab," and "low cut dress," and "big earring girl," (R 147), and one worker was maligned on account of pregnancy. (R 136).

It is self evident, taking into consideration the manner of the speakers, the relations of the parties, and the circumstances under which the words were spoken, that the words were spoken for the very purpose of insulting the workers and causing a breach of the peace. We call the court's attention to the testimony of James Youngdahl, Jerome Bill Becker and Woodrow Chandler.

James Youngdahl testified that there was no question that the workers were called scabs in a group of 12, 13 or 14. (R 42). He was asked if he was called a scab would he consider that an insult?

"A. Yes, sir, to me it would be an insult." (R 43).

Jerome Bill Becker, testified,

"I think — I would say it is an insult for someone to be called a scab or be a scab." (R 62).

He stated that if a group of people assembled on strike and were standing, hollering and jeering at another group coming out hollering, "dirty scab, pony tailed scab, fat scab," and their attitude looking belligerent, that the group being hollered at, should be insulted. (R 69).

"Q. Well, then what is the purpose of your crowd hollering that, to insult them?

A. Yes, I _____." (R 69-70).

Woodrow Chandler, also testified that the purpose of hurling the word "scab" at the workers was to insult them. (R 89).

In Cantwell V. Connecticut, 60 S. Ct. 900; 310 U. S. 296, the court, in considering a common law breach of the peace, stated: —

> "Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.
>
> We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse." 60 S. Ct. 906.

The court *in Milk Wagon Drivers Union V. Meadowmoor Dairies, supra, at 61 S. Ct. 555,* said: —

> "It is not for us to make an independent valuation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable

> evasion of the constitutional guarantee here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority. And to do so in the name of the Fourteenth Amendment in a matter peculiarly touching the local policy of a state regarding violence ter to discredit the great immunities of the Bill of Rights.
>
> See:
>
> Local Union No. 10, United Ass'n., of Journeymen V. Graham, 73 S. Ct. 585, 345 U. S. 192; Chaplinsky V. New Hampshire, 62 S. Ct. 766, 315 U. S. 568; International Brotherhood of Teamsters V. Vogt, 77 S. Ct. 1166.

The danger in these times from the coercive activities of those who want to organize a union, and who in their fanatical desire, would do violence, and abuse and insult those who do not wish to join a union, if they do not agree with them, is thrown into sharp focus here. The strikers by their coercive activities were depriving the employees of their equal right to exercise their liberties; that is, the "freedom of unorganized labor to bargain individually" and to "refuse to join or affiliate with a labor union." Ark. Stats. (1947) Sec. 81-201, Amendment No. 34 to Arkansas Constitution.

D. Lewd and obscene, profane, libelous, insulting or fighting words are not protected by the 14th Amendment.

In the case of Chaplinsky V. New Hampshire, 62 S. Ct. 766, 315 U. S. 568, the defendant was charged with addressing the complainant as follows: —

> "You are a God damned racketeer" and "a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists'."

Chaplinsky was distributing the literature of his sect on the streets of Rochester on a busy Saturday afternoon. Members of the local citizenry complained to the City Marshal, Bowering, that Chaplinsky was denouncing all religion as a "racket". Chaplinsky was warned that the crowd was getting restless. Sometime later a disturbance occurred, and the traffic officer on duty at the busy intersection started with Chaplinsky for the police station, but did not inform him that he was under arrest or that he was going to be arrested. On the way they encountered Marshal Bowering who had been advised that a riot was under way, and was therefore hurrying to the scene. Bowering repeated his earlier warning to Chaplinsky who then addressed to Bowering the words set forth in the complaint.

Chaplinsky was convicted under a New Hampshire Statute which provided: —

"No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or public place, nor call him by any offensive or derisive name. *****"

At the trial the court ruled as immaterial any testimony relating to appellant's mission "to preach the true facts of the Bible," his treatment at the hands of the crowd, and the alleged neglect of duty on the part of the police. This action was approved by the court below which held that neither provocation nor the truth of the evidence would constitute a defense to the charge. 62 S. Ct. 768.

The Court affirmed and said that lewd and obscene, profane, libelous and insulting or "fighting words" — those by their very utterance inflict injury or tend to incite an immediate breach of peace, raise no constitutional question, because such words are no essential part of an exposition of ideas and are of slight social value. 62 S. Ct. 769.

The court further said that the refusal of the State Court to admit evidence of provocation and evidence bearing on the truth or falsity of the utterances is open to no Constitutional objection. Whether the facts sought to be proved by such evidence constitute a defense to the charge or may be shown in mitigation are questions for the state court to determine. (62 S. Ct. 770).

Arkansas's Tranquility Statute (Ark. Stats. 1947) Sec.

41-1412 is even more narrow in its terms than the New Hampshire Statute, for it makes it a criminal offense for any person to use any profane, violent, vulgar, abusive or insulting language toward another in his presence. The statute further provides that this language must in its common acceptation be calculated to arouse to anger the person to whom it is addressed.

In Moore V. State, 50 Ark. 25, the Court, in construing the above statute, had this to say about evidence that was offered by the defendant, "that language used by him on the occasion referred to in the indictment was in response to opprobrious language used by Willie of and concerning the defendant's father, and that Willie, without any provocation, was the first to use angry words.":

> "The evidence would not have gone to the extent of justification, or complete exculpation; for of course violent words cannot excuse like violent words. But the jury might consider the provocation in mitigation of the punishment. And this is manifestly what they did; for they have inflicted the lowest penalty." 50 Ark. 28.

The Supreme Court quoted extensively from Chaplinsky and stated that "A constitutional right to abuse, insult, slander, or intimidate others is nonexistent in this country. 226 Ark., 85.

E. The findings by the lower court and Supreme Court of Arkansas, that the defendants, in picketing Rainfair's Plant, resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, is fully sustained by the evidence.

Every time the workers went to and from the plant, or go to lunch, or took a recess, the strikers would congregate along west edge of their lot and sometimes in Rowena Street, and engage in loud and offensive name calling, singing and shouting, directed at the workers. They were called "slaves", "cotton picking fools", scabs of all kind such as "dirty scabs", "pony tailed scabs", "fat scabs", "crazy scabs." This was done individually, in couples, by the entire group, and in dozens, in a loud and boisterous manner. When it got to be more than that it became "bedlam." (R 128)

They made slurring remarks, in a loud and boisterous manner, about the personal appearance of individual workers. They would make remarks about raising rocks in the yard and finding frogs and disagreeable looking animals that were finer than the appearance of the workers. (R 128).

They picked out individual workers and insulted and abused them by singling her out and calling her insulting

names which they thought fit her appearance and personality. They insulted Rubie Reynolds, who was pregnant, by hollering, "Get the hot water ready", and "I am coming to make another payment on the baby, call Dr. Beaton," and "Why you can work another hour until you go in the delivery room at least", and "There is no need in going up there now." When she came back they asked her did she go on a false alarm. (R 136). Corlis Jones was called a "big yellow scab." (R 139). Lorene Jones was called a "fuzzy-headed scab," "slave," "damned fool", and "filthy face," and one of the strikers spit at her three times through the plant window while she was working. (R 140-41). Ella Jane Clark was called "a scab," "pony tailed scab," and "fool." (R 143). Policeman Brown was called "a scab" because he was married to Annie Brown, who worked at the plant. (R 145). Geraldine Baker was called a "fat scab," and was called a "low-cut dress", and "big earring girl". They then hollered "Does Pete still like low-cut dresses and earrings?" (R 147). Dorothy Davis was called "a dumb scab", "cotton picking scab", and just all kinds of scabs. She lived in the country and they sang songs to her, "Born in a cotton field in Arkansas, the greenest gals we ever saw, working for Rainfair for seventy-five cents." (R 149).

The testimony of these eight ladies is illustrative of the conduct of the strikers toward all the employees. They

literally had to run a gauntlet of mass picketing, insults and abuse every time they went to and from work.

This conduct was set in a background of threats and of violence. During the first strike, Pete Bonady testified a striker said "that she was going to wipe the sidewalk with me and send me back to Wisconsin because I was nothing but trash." (R 128).

On one occasion nails were strewn throughout Rainfair's parking lot, and about a week later roofing tacks were strewn on the Manager's driveway at home and in the driveways at the home of twelve girls who did not go on strike. (R 128-129).

They threatened to whip Jewell Newby and move the trailer she was living in. (R 92-96).

The second strike opened up with violence. The first thing the strikers did was to carry out their threats against Jewell Newby. In the dark hours of the night and while every body was asleep, except Jewell Newby, two strikers punctured the tires on Mrs. Newby's daughter's car, that was parked in front of her trailer. They were convicted. (R 93-94).

At 5:15 the same morning a five-foot black snake was found lying on the floor under a window that had been knocked out. (R 106).

Lee Hamrick testified that the reason he got out of

the Union was because some of them tried to get him to do violence and destroy property (R 189). On further examination he stated that it was not any one in the strike. (R 190). He then said,

> "They wanted me to put snakes and stuff like that, in there. They asked me to, but I wouldn't do it." (R 190).

One of the strikers told Jewell Newby if she would come outside of her trailer that she would whip her. (R 96). They made her move the trailer. (R 184).

The above violence and insulting conduct on the picket line created much nervousness and ill will between the workers and the strikers. The situation was highly explosive. The strikers were mad because the workers would not join with them in trying to organize the plant. The workers felt like they had the right to work, and if they did not want to join the union that was their business. The union withdrew their request for an election so the matter could not then be settled by a vote. (R 45).

The hatred that the strikers had for the workers is plainly shown by their actions and words. They became so worked up that they were willing to fight, insult, abuse, damage property, and recruit a person to throw snakes in the plant. This feeling was even reflected in the attitude of two young boys, after the injunction had been issued. They were Thomas Cobb, brother to Mildred Tacker, a

striker, and Jerry Hamrick, son of Lee Hamrick, a former striker. They broke and strew a large amount of milk bottles and coca cola bottles in Rowena Street and in the parking lot in front of the plant. When Thomas Cobb was asked why he did it, he said, "Pete did not treat his sister right." "Well, he wouldn't give her job back to her down at the plant." He also said he was mad at Mrs. Newby. "I didn't want to have nothing to do with Mrs. Newby. I knew she was trouble." (R 169).

This conduct is far from being a peaceful and truthful discussion of the rights of the strikers, and such conduct clearly comes within the power and duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of the persons involved. See Thornhill v. Alabama, supra, and the subsequent cases cited by Respondent in Par. A. (See page 17 et seq.).

PETITIONERS' BRIEF

A. The use of the word "Scab" or varients of that term under the facts in this case is not protected activity.

The Petitioners argue that the use of the word "scab" is protected activity. They use forty (40) pages of their argument (P 28 - 69) to try to convince this Court that they have a constitutional right to abuse, insult, slander and intimidate the employees of Rainfair. They spend much time and effort trying to prove that the use of the word "scab" does not amount to intimidation by insult.

We submit that their argument is beside the point because the parties themselves have placed the meaning on the word "scab" and have stated that the purpose of the persistent use of same was intended to insult the employees of Rainfair. (See testimony of Youngdahl, Becker and Chandler) (R 43-62-69 and 70).

Becker testified that there might be some one lower than a scab; that it is pretty low and that any one crossing a picket line should be called a scab. (R 90). Jewell Newby testified that "They called me a scab. Isn't that the lowest down name that you can be called? He says he doesn't want to be called a scab. I think it is insulting." (R 100).

There are many cases holding that,

"It is a matter of common knowledge that the word 'scab' as a designation of a human being, is one of the most opprobrious and insulting in the English language."

See; Webster Internat'l Dict. Ed. 1922, Third Century Dict. (R 89); U. S. V. Toliaferro, 290 Fed. Rpr. 214; Toliaferro V. U. S. 290 Fed. Rpr. 906;

where court said, at page 908: —

"No one questions the right of a court of competent jurisdiction upon a proper showing to enjoin intimidation by insult."

See also; *State V. Johnson, 18 P. (2d) 35; Prince V. Socialistic Cooperative Pub. Ass'n., 64 N. Y. S. 285; State V. Christie 97 Vt. 461, 123 A. 849; 34 A. L. R. 577; 78 Corpus Juris Sec. Page 586 under 'scab'. Caterpillar Tractor Co. V. N. L. R. B. (7th Circuit) 230 Fed. (2d) 357. Evening Times P & P Co. V. American Newspaper Guild 199A. 598; See Syllabus (8).*

In The Caterpillar Tractor case the court said: —

"Perhaps no greater disruptive force can be found in the field of labor relations than that innate in the application of the term "scab" to one employee by his fellow workman. The term, when applied to one embraced in a labor group, bears an inescapable connotation of opprobriousness and vileness commonly recognized by all members of modern American Society." (358)

The employees were insulted and intimidated by the strikers who formed a combine to run the employees off the job. To get into a quarrel in the course of an argument on the picket line and use unseemly language is not ordinarily a matter which would justify an injunction.

but to combine with others to use profane and indecent language, in an attempt to humiliate those who are working and thus prevent them from working, is a very different thing. See N. L. R. B. V. Longview Furniture Co. (4th Circuit) 206 Fed. (2d) 274.

In Truax V. Corregan, 42 S. Ct. 124; 257 U. S. 312, the court condemned somewhat similar activities and said: —

> "Violence could not have been more effective. It was moral coercion by illegal annoyance and obstruction, and it thus was plainly a conspiracy." 42 S. Ct. 128.

Most of the employees of Rainfair had been working since the plant opened. They did not want to join the Union. They should not be subjected to the persistent abuse and humiliation, by the strikers, because they did not agree with the strikers labor philosophy.

They were entitled to work, and bargain individually with Rainfair, and in so doing to be free from the persistent abuse and insults hurled by the strikers.

B. The Injunction was not too broad.

Petitioners argue at page 59 of their Brief that the all inclusive injunction entrenches upon their constitutional rights.

This should not present a very serious question for the background of violence, and the combining together of the

strikers in persistently hurling, profane, obscene and insulting spithets at the employees who were going to and from work, in an effort to humiliate and degrade them publicly, and prevent them from working, justified the injunction in the terms granted.

The breadth of said injunction was necessary to prevent future excesses and coercion, which, in the light of past conduct, may reasonably be anticipated.

Milk Wagon Drivers Union V. Meadowmoor Dairies, supra., 132 A. L. R. 1221.

The proper procedure is for the Respondents to file a motion to modify the injunction in the trial court. If and when Respondents are able to show the trial court that peaceful picketing can be carried on by the Union; they are free to do so. The Union has not attempted to make such a showing.

Local Union No. 656 V. Mo. Pac. R. R. Co. 221 Ark. 509, Smith V. F & C Engineering Co. 225 Ark. 699, Hickinbotham V. Williams, Chancellor, The Law Reporter, Vol. 102. No. 15, p. 52, July 1, 1957.

C. The Injunction does not violate the Petitioners' Freedom of Assembly.

Petitioners argue at page 69 that their constitutional right of peaceable assembly has been violated. They were enjoined from "loitering and congregating around and un-

der the tent and upon the property." (R 15). The Union had rented this lot for thirty (30) days and it was here that the threats, and the obscene and insulting epithets were hurled at the employees. It was here that the mass picketing was done and the access, to and from the plant, obstructed.

Youngdahl said that what went on over there would be called "strike activity," or in a broad sense "picketing activity." (R 38). The illegal combination was planned and executed from this lot.

Their conduct was anything except peaceable assembly.

D. The Right of State to enjoin the Strikers activities has not been preempted by the N. L. R. B.

The Petitioners argue at pages 71-87 that the state court had no jurisdiction because of Taft-Hartley.

We have endeavored to demonstrate that from Thornhill down to date that it is the power and duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents, and that is what it did here.

We believe there is ample evidence of violence, destruction of property, intimidation by insults, and with a

snake and an unlawful combination to otherwise intimidate and coerce the employees who wanted to work. In other words, their activities were unlawful under Arkansas law.

The Union denies that the concerted activities are other than peaceable. So, the issue is drawn.

The Arkansas court found that the activities were unlawful under State law, and this court will not disturb that finding unless "it is so without warrant as to be a palpable invasion of the constitutional guaranties here invoked." See Meadowmoor, 61 S. Ct. 555.

Union contends that because they filed an unfair labor practice charge with N. L. R. B., that their activities were protected. See Petitioners' Brief (3-9). This question has been settled in *United Auto A. & A. I. W. V. Wisconsin, 76 S. Ct. 794; 351 U. S. 266*, where the court said: —

> "As a general matter we have held that a State may not, in the furtherance of its public policy, enjoin conduct 'which has been made an 'unfair labor practice' under the federal statues.' Id., 348 U. S. at page 474, 75 S. Ct. at page 485, and cases cited. But our post-Taft-Hartley opinions have made it clear that this general rule does not take from the States power to prevent mass picketing, violence, and overt threats of violence."

Union complains that Rainfair would not recognize and bargain with it as the majority representative of the employees, yet the Union withdrew its request for an elec-

tion. (R 45). Rainfair should not be criticized for not recognizing the Union Only 29 of the employees struck. It is very plain that the Union did not represent a majority of the workers. Had Rainfair recognized the Union it would have violated Arkansas' Freedom to Work Laws. It is not a violation of the Act for management to desire reasonable proof of majority Unionization. *North Electric Mfg. Co. V. N. L. R. B. 123 Fed.* (2d) 887, *N. L. R. B. V. Epstein, 203 Fed. (2d) 482.*

An election was held on October 19th, 1955, and the employees voted not to Unionize.

We submit that this question of preemption is not properly before this court. It was not raised in the trial court. (R 7 & 8 — 11 & 12).

There is no evidence in the record in regard to what happened before the Labor Board. It has been brought in here in the Petitioners' Brief for the first time. This was pointed out in Rainfair's Brief In Opposition to the Petition for Writ of Certiorari. (P 2).

The court was careful to point in *Amalgamated Meat Cutters V. Fairlawn Meats, 77 S. Ct. 605 that,*

> "Petitioners objected throughout that jurisdiction of the National Labor Relations Board was exclusive."
>
> See, also; *Amalgamated Clothing Workers V. Richman Brothers, 75 S. Ct. 452, 348 U. S. 511.*

This decision denies to the Federal Courts authority at the

instance of a Union to enjoin the issuance of a state injunction, leaving only the remedy of direct appeal, and limiting the preemption theory to the right of the Federal Courts at the instance of N. L. R. B. to enjoin state action which intrudes upon the area preempted by Congress.

It naturally follows that if the remedy is by direct appeal from the state court that the question of preemption must be first raised in the lower court. The Supreme Court of Arkansas notes in its opinion that this question was not raised in the lower court.

We submit that Supreme Court was correct in its findings that the whole pattern of conduct along the picket line discloses a design on the part of petitioners to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause a breach of the peace and other unlawful results.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this court should affirm the judgment of the Arkansas Supreme Court.

Respectfully submitted,

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APPENDIX

Constitutional Provision Involved

No. 34 Rights Of Labor

"Sec. 1. Discrimination for or against union labor prohibited. No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.

Sec. 2. Enforcement of amendment — Legislation authorized. — The General Assembly shall have power to enforce this article by appropriate legislation." See 1 Ark. Stats. (1947) P. 233.

Statutory Provisions Involved

Sec. 41-1412, 4 Ark. Stats. (1947) P. 61.

"Profane or abusive language as breach of the peace — Penalty. — If any person shall make use of any profane,

violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, shall be deemed guilty of a breach of the peace, and upon conviction thereof shall be punished by a fine of not less than five ($5.00) nor more than two hundred dollars ($200.00) or by imprisonment in the county jail for not less than one (1) nor more than six (6) months, and any person who shall be punished by fine only under the provisions of this act (41-1412 - 41-1414) and shall not pay said fine, or secure the payment thereof, to the satisfaction of the court before such person is released from custody, it shall be the duty of the officer having such person in custody to confine him in the county jail until such fine is paid at the rate of one dollar ($1.00) per day. (Act Feb. 19, 1909, No. 30, Parg. 1, p. 73, C & M. Dig., Parg. 2774; Pope's Dig., Parg. 3479.)"

Sec. 81-201 and 202, 7 Ark. Stats. (1947) P. 314-315. "Public Policy — Freedom to bargain. Freedom of organized labor to bargain collectively, and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment No. 34 to the Constitution. (Acts 1947, No. 101, Parg. 1, P. 211.)" 81-201. "Affiliation with or failure to join union as condition of

employment prohibited. — No person shall be denied employment because of membership in, or affiliation with, a labor union; nor shall any person be denied employment because of failure or refusal to join or affiliate with a labor union; nor shall any person, unless he shall voluntarily consent in writing to do so, be compelled to pay dues, or any other monetary consideration to any labor organization as a prerequisite to, or condition of, or continuance of, employment. (Acts 1947, No. 101, Parg. 2, P. 211)." 81-202.